



## DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2021-0030]

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Immigration Detention Ombudsman, U.S. Department of Homeland Security.

**ACTION:** Notice of a New System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the U.S. Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, “DHS/Office of the Immigration Detention Ombudsman (OIDO)-001 Office of the Immigration Detention Ombudsman System of Records.” This system of records allows DHS/OIDO to collect and maintain records related to cases brought forth by individuals or investigations regarding potential violations of law, individual rights, standards of professional conduct, contract terms, or policy related to immigration detention by any officer or employee of U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), or any contracted, subcontracted, or cooperating entity personnel. Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act, elsewhere in the *Federal Register*. This newly established system will be included in DHS’s inventory of record systems.

**DATES:** Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This new system will be effective upon publication. Routine uses will be effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number DHS-2021-0030 by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202-343-4010.
- Mail: Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, U.S.

Department of Homeland Security, Washington, D.C. 20528-0655.

*Instructions:* All submissions received must include the agency name and docket number DHS-2021-0030. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general and privacy questions, please contact: Lynn Parker Dupree, (202) 343-1717, [Privacy@hq.dhs.gov](mailto:Privacy@hq.dhs.gov), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, D.C. 20528-0655.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The U.S. Department of Homeland Security (DHS) Office of the Immigration Detention Ombudsman (OIDO) is giving notice that it proposes to establish a new DHS system of records notice (SORN) titled, “DHS/OIDO-001 Office of the Immigration Detention Ombudsman System of Records.” OIDO is an independent component within DHS tasked with reviewing and resolving individual complaints and providing independent oversight of immigration detention facilities, including conducting announced and unannounced inspections, reviewing contract terms for immigration detention facilities and services, and making recommendations and reporting to Congress on findings. OIDO was established by Congress in Section 106 of the Consolidated Appropriations Act, 2020 (Pub. Law No. 116-93, 133 Stat. 2504 (Dec. 20, 2019)), as

codified by 6 U.S.C. 205, which outlined OIDO's core responsibilities:

- Establish and administer an independent, neutral, and confidential process to receive, investigate, resolve, and provide redress, including referral for investigation to the Office of Inspector General, referral to U.S. Citizenship and Immigration Services (USCIS) for immigration relief, or any other action determined appropriate, for cases in which Department officers or other personnel, or contracted, subcontracted, or cooperating entity personnel, are found to have engaged in misconduct or violated the rights of individuals in immigration detention;
- Establish an accessible and standardized process regarding complaints against any officer or employee of U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), or any contracted, subcontracted, or cooperating entity personnel, for violations of law, standards of professional conduct, contract terms, or policy related to immigration detention;
- Conduct unannounced inspections of detention facilities holding individuals in federal immigration custody, including those owned or operated by units of state or local government and privately-owned or operated facilities;
- Review, examine, and make recommendations to address concerns or violations of contract terms identified in reviews, audits, investigations, or detainee interviews regarding immigration detention facilities and services;
- Provide assistance to individuals affected by potential misconduct, excessive force, or violations of law or detention standards by DHS officers or other personnel, or contracted, subcontracted, or cooperating entity personnel; and
- Ensure that the functions performed by the Ombudsman are complementary to existing functions within the DHS.

In order to accomplish those responsibilities, OIDO is creating this system of records to

collect and maintain records related to individual complaints from or about individuals in immigration detention regarding potential violations of law, individual rights, standards of professional conduct, contract terms, or policy related to immigration detention by any officer or employee of CBP or ICE, or any contracted, subcontracted, or cooperating entity personnel. The DHS/OIDO system of records covers information that is received by OIDO in response to individuals submitting a complaint via OIDO's Case Intake Form. The form is currently paper-based and in the future will be fillable electronically. This form is not required to submit a case to OIDO; however, a properly completed form ensures that OIDO receives the necessary information to assist with a case. OIDO will use and maintain the data collected within OIDO's case management system to manage, process, track, and respond to complaints and inform and manage investigations.

OIDO will use information collected to triage the complaint and link it with any previous cases related to the same detainee, as well as for proper consent, jurisdiction, and exigent circumstances. The information will also be used to verify information about the complaint in systems maintained by ICE, CBP, and other DHS headquarters offices. Once assigned for resolution, OIDO will review the data provided, conduct necessary background research about the complaint, and engage with DHS components (primarily ICE and CBP) to come to a resolution. To facilitate the resolution process, information in this system of records may be shared with DHS components and offices (and occasionally other Departments involved in the immigration process, including the Departments of State and Justice) for identification, verification, and corroboration purposes. OIDO will then communicate the result to the submitter of the complaint, to the extent the submitter of the complaint is permitted to receive any of the Privacy Act protected information that is subject to this SORN or other applicable and relevant SORNs. As a follow up to complaints and/or areas of concern, OIDO may also use data to inform future investigations and recommendations.

Consistent with DHS's information sharing mission, information stored in the DHS/OIDO-001 Office of the Immigration Detention Ombudsman System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/OIDO may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This newly established system will be included in DHS's inventory of record systems.

## II. Privacy Act

The fair information practice principles found in the Privacy Act underpin the statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/OIDO-001 Office of the Immigration Detention Ombudsman System of Records.

In accordance with 5 U.S.C. sec. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

**SYSTEM NAME AND NUMBER:** U.S. Department of Homeland Security (DHS)/Office of the Immigration Detention Ombudsman (OIDO)-001 Office of the Immigration Detention Ombudsman System of Records.

**SECURITY CLASSIFICATION:** Unclassified.

**SYSTEM LOCATION:** Records are maintained at the Office of the Immigration Detention Ombudsman Headquarters in Washington, D.C., field offices, and other intake locations.

**SYSTEM MANAGER(S):** Immigration Detention Ombudsman, Office of the Immigration Detention Ombudsman, U.S. Department of Homeland Security, Washington, D.C. 20528, [detentionombudsman@hq.dhs.gov](mailto:detentionombudsman@hq.dhs.gov).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** Section 106 of the Consolidated Appropriations Act, 2020, Pub. Law No. 116-93, 133 Stat. 2504 (Dec. 20, 2019; 6 U.S.C 205).

**PURPOSE(S) OF THE SYSTEM:** The purpose of this system is to allow DHS/OIDO to collect and maintain records to investigate potential violations of law, individual rights, standards of professional conduct, contract terms, or policy related to immigration detention by any officer or employee of CBP, ICE, or any contracted, subcontracted, or cooperating entity personnel.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** The categories of individuals covered by this system of records include:

- Persons who contact OIDO to allege complaints from or about individuals in immigration detention regarding the potential violation of immigration detention standards or other potential misconduct by DHS, its employees, contractors, grantees, or others acting under the authority of the Department. These individuals may include the person currently or formerly detained or individuals

who submit a complaint on behalf of that individual, including an attorney or representative. An individual may submit a complaint anonymously.

- DHS employees, contractors, grantees, volunteers, or others acting under the authority of the Department alleged to be involved in any such violations or misconduct.
- Third parties directly or indirectly involved in the alleged incident and identified as relevant persons to an investigation.

#### **CATEGORIES OF RECORDS IN THE SYSTEM:**

- Submitter's full name, including any aliases;
- Submitter's contact information, including mailing addresses, e-mail addresses, and phone numbers;
- Law Firm/Organization if the submitter is an attorney or accredited representative;
- Detainee's full name, including any aliases;
- Detainee's A-Number;
- Detainee's contact information, including mailing addresses, e-mail addresses, and phone numbers;
- Detainee's sex;
- Detainee's date of birth;
- Detainee's country of birth and country(s) of citizenship;
- Detainee's detention history, including facility name and dates detained;
- Incident date;
- Compliant/incident number;
- Complaint description;
- Complaint category (e.g., abuse, disability accommodation, language access, legal

representation, personal property, medical concerns, religious accommodation);

- Subject of the complaint (e.g., adult, family unit, or minor child, and names of other family members involved);
- Prior actions taken to remedy the problem; and
- Consent of the detainee for OIDO to disclose information in the file to a designated representative, if applicable.

Submitters may offer more information than is specifically requested by OIDO, such as the detainee's Visa number or Passport number as part of their submissions or descriptions of the complaint. Documentation provided to support complaints may also include legal and medical records or other records, such as those related to disability accommodations, personal property, or the conditions of detention.

Throughout the course of its investigations, OIDO may also collect:

- Evidentiary documents and material, comments, records, photographs, and reports relating to the alleged complaint and to the resolution of the complaint;
- Investigation notes, including written and audio/video recordings of interviews with detainees, third parties involved in the complaint, and facility personnel;
- Interviewee's full name and contact information;
- Interviewee's position/title and current duty station (if applicable);
- Documentation concerning requests for additional information needed to complete the investigation;
- Letters, memoranda, and other documents alleging violation of immigration detention standards or other potential misconduct from complainants;
- Internal letters, memoranda, and other communications within DHS related to complaints; and
- Results of an investigation of a complaint.



**RECORD SOURCE CATEGORIES:** Records are obtained from detainees, their representatives (e.g., family, legal), or other persons submitting cases on a detainee's behalf in person or via forms submitted by mail, email, fax, or, in the future, electronically; and by telephone. OIDO also accepts anonymous complaints. Information may be collected from DHS employees and/or contractors that are interviewed during an OIDO investigation. Additional information may be collected from other DHS components, databases, or systems (primarily ICE and CBP), and other government agencies, such as the Departments of State and Justice.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:** In addition to those disclosures generally permitted under 5 U.S.C. sec. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. sec. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys' Offices, or other federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. sec. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To an attorney or representative who is acting on behalf of an individual covered by this system of records to obtain the individual's information submitted to OIDO.

J. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, with the approval of the Chief Privacy Officer, when DHS is aware of a need to use relevant data, that relate to the purpose(s) stated in this SORN, for purposes of testing new technology.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** DHS/OIDO stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** DHS/OIDO may retrieve records by any of the personal identifiers listed above, such as name, A-Number, date of birth, or complaint number.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:** DHS/OIDO is in the process of drafting a proposed records retention schedule for the information maintained. DHS/OIDO is currently working with NARA to establish the records retention schedule and will adhere to it once finalized.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

DHS/OIDO safeguards records in this system according to applicable rules and policies,

including all applicable DHS automated systems security and access policies.

DHS/OIDO has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

**RECORD ACCESS PROCEDURES:** The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable, because it is a law enforcement system. However, DHS/OIDO will consider individual requests to determine whether or not information may be released. Thus, individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer or Chief Freedom of Information Act Officer, whose contact information can be found at <http://www.dhs.gov/foia> under “Contact Information.” If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, U.S. Department of Homeland Security, Washington, D.C. 20528-0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual’s request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual’s signature must either be notarized or submitted under 28 U.S.C. sec. 1746, a

law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov/foia> or 1-866-431-0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**CONTESTING RECORD PROCEDURES:** For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each

component that maintains a system of records containing the record. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, individuals may seek to amend records following the “access procedures” above. DHS/OIDO, in its discretion, may choose to make the requested amendment. However, neither this system of records notice, nor DHS/OIDO making a requested amendment, confers to individuals any right to access, contest, or amend records not covered by the Privacy Act or JRA.

**NOTIFICATION PROCEDURES:** See “Record Access Procedures” above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

The Secretary of Homeland Security, pursuant to 5 U.S.C. sec. 552a(k)(2) and (k)(5), has exempted this system from the following provisions of the Privacy Act, 5 U.S.C. sec. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Additionally, when this system receives a record from another system exempted in that source system under 5 U.S.C. sec. 552a(j)(2), (k)(2), and (k)(5), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

**HISTORY:** None.

Lynn Parker Dupree,  
Chief Privacy Officer,  
U.S. Department of Homeland Security.  
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